

1 CHRISTOPHER A. STECHER, CASB No. 215329

christopher.stecher@kyl.com

2 KEESAL, YOUNG & LOGAN

A Professional Corporation

3 450 Pacific Avenue

San Francisco, California 94133

4 Telephone: (415) 398-6000

Facsimile: (415) 981-0136

5 TIMOTHY P. HARKNESS (*pro hac vice to be filed*)

timothy.harkness@freshfields.com

6 DAVID Y. LIVSHIZ (*pro hac vice to be filed*)

7 david.livshiz@freshfields.com

WERONIKA BUKOWSKI (*pro hac vice to be filed*)

8 weronika.bukowski@freshfields.com

FRESHFIELDS BRUCKHAUS DERINGER US LLP

9 601 Lexington Avenue, 31st Floor

New York, New York 10022

10 Telephone: (212) 277-4000

Facsimile: (212) 277-4001

11 *Attorneys for Applicant Palantir Technologies, Inc.*

12
13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15
16) Misc. Case No. _____

)

17)

)

18 EX PARTE APPLICATION OF PALANTIR
TECHNOLOGIES, INC. FOR AN ORDER
19 PURSUANT TO 28 U.S.C. § 1782 TO OBTAIN
DISCOVERY FOR USE IN FOREIGN
20 PROCEEDINGS

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **APPLICANT PALANTIR TECHNOLOGIES,**
) **INC.'S EX PARTE APPLICATION FOR AN**
) **ORDER PURSUANT TO 28 U.S.C. § 1782 TO**
) **OBTAIN DISCOVERY FOR USE IN**
) **FOREIGN PROCEEDINGS**

21)

22)

23)

24)

TABLE OF CONTENTS

I.	PRELIMINARY STATEMENT	1
II.	FACTUAL BACKGROUND	4
A.	The Parties	4
B.	Abramowitz’s Relationship With Palantir.....	4
C.	Abramowitz Misappropriates Palantir’s Trade Secrets And Seeks To Patent Palantir’s Inventions As His Own	5
1.	The Cyber Technology	5
2.	The Healthcare Technology.....	6
D.	Palantir Fights Back	7
E.	Palantir Commences The German Proceeding.....	8
III.	REQUESTED DISCOVERY	8
IV.	ARGUMENT	9
A.	Palantir’s Application Meets The Section 1782 Requirements.....	10
1.	Palantir is an “Interested Person”	11
2.	The Application Seeks Documentary and Testimonial Evidence	11
3.	The Evidence Is For Use in a Foreign Proceeding	11
4.	The Discovery Subject is Located in the Northern District of California	12
B.	The <u>Intel</u> Discretionary Factors Strongly Favor Granting Discovery	12
1.	The German Tribunal May Not Compel Discovery of Evidence in the United States	12
2.	The German Tribunal Is Not Hostile To This Application	13
3.	The Application Has Not Been Filed to Circumvent Any Law or Rule.....	14
4.	The Discovery Requests Are Not Unduly Intrusive or Burdensome	15
C.	This Court May And Should Order Abramowitz To Preserve Evidence Pending Compliance With An Order Pursuant To Section 1782	15
V.	CONCLUSION	16

TABLE OF AUTHORITIES

Cases	Page(s)
<u>In re AIS GmbH Aachen Innovative Solutions</u> , No. 5:16-mc-80094-EJD, 2017 U.S. Dist. LEXIS 114288 (N.D. Cal. July 21, 2017)	12
<u>In re Appl. of Auto-Guadeloupe Investissement S.A.</u> , No. 12-0221, 2012 WL 4841945 (S.D.N.Y. Oct. 10, 2012)	13
<u>Appl. of Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.</u> , 747 F.3d 1262 (11th Cir. 2014)	9
<u>In re Appl. of Malev Hungarian Airlines</u> , 964 F.2d 97 (2d Cir. 1992)	10
<u>In re Appl. of Proctor & Gamble Co.</u> , 334 F. Supp. 2d 1112 (E.D. Wis. 2004)	13
<u>Brandi-Dohrn v. IKB Deutsche Industriebank AG</u> , 673 F.3d 76 (2d Cir. 2012)	9, 12
<u>In re Chevron</u> , 709 F. Supp. 2d 283 (S.D.N.Y. 2010)	9
<u>In re Clerici</u> , 481 F.3d 1324 (11th Cir. 2007)	12
<u>Consorcio Minero S.A., v. Doe Run Resources Corp.</u> , No. 11-0583, 2011 WL 4550200 (E.D. Mo. Sept. 30, 2011)	13
<u>Cryolife v. Tenaxis Medical</u> , No. C08-0514 HRL, 2009 U.S. Dist. LEXIS 3416 (N.D. Cal. Jan. 13, 2009)	11, 14, 15
<u>In re Republic of Ecuador</u> , No. C-10-80225 MISC CRB (EMC), 2010 U.S. Dist. LEXIS 102158 (S.D. Cal. Sept. 10, 2010)	9, 15
<u>In re Eurasian Natural Resources Corp.</u> , No. 18-MC-80041-LB, 2018 WL 1557167 (N.D. Cal. Mar. 30, 2018)	15
<u>Euromepa S.A. v. R. Esmerian, Inc.</u> , 51 F.3d 1095 (2d Cir. 1995)	13
<u>In re Ex Parte Motorola Mobility, LLC</u> , No. C 12-80243 EJD (PSG), 2012 WL 4936609 (N.D. Cal. Oct. 17, 2012)	14
<u>Heraeus Kulzer GmbH v. Biomet</u> , 633 F.3d 591 (7th Cir. 2011)	13, 14

1	<u>Intel Corp. v. Advanced Micro Devices, Inc.</u> ,	
2	542 U.S. 241 (2004)	<i>passim</i>
3	<u>In re IPCom GMBH & Co. KG</u> ,	
4	No. 5:14-MC-80037-EJD-PSG, 2014 WL 12772090 (N.D. Cal. Apr. 10, 2014).....	13, 14
5	<u>John Deere Ltd. v. Sperry Corp.</u> ,	
6	754 F.2d 132 (3d Cir. 1985)	10
7	<u>In re Machida</u> ,	
8	No. 8:15-mc-00028-UA, 2015 WL 12830388 (C.D. Cal. Nov. 3, 2015).....	15
9	<u>In re Mak</u> ,	
10	No. C 12-80118 MISC SI, 2012 WL 1965896 (N.D. Cal. Mar 31, 2012)	11
11	<u>In re Servicio Pan Americano de Proteccion</u> ,	
12	354 F. Supp. 2d 269 (S.D.N.Y. 2004)	13
13	<u>Siemens AG v. Western Digital Corp.</u> ,	
14	No. 8:13-cv-01407-CAS-(AJWx), 2013 WL 5947973 (C.D. Cal. Nov. 4, 2013).....	10
15	<u>In re Sociedad Militar Seguro de Vida</u> ,	
16	985 F. Supp. 2d 1375 (N.D.Ga. 2013).....	13
17	<u>In re Technik</u> , No. C11-1386-JCC, 2011 U.S. Dist. LEXIS 162826 (W.D. Wash. Oct.	
18	6, 2011)	12, 13
19	<u>In re Varian Med. Sys Int’nl AG</u> ,	
20	No. 16-mc-80048-MEJ, 2016 U.S. Dist. LEXIS 38911 (N.D. Cal. Mar. 24, 2016)	14
21	<u>Weber v. Finker</u> ,	
22	554 F.3d 1379 (11th Cir. 2009)	11
23	Statutes	
24	28 U.S.C. § 1782	<i>passim</i>

1 Applicant Palantir Technologies, Inc. (“Palantir” or the “Applicant”), by and through
2 its undersigned attorneys, respectfully seeks an Order pursuant to 28 U.S.C. § 1782 to obtain
3 discovery from Marc L. Abramowitz (“Abramowitz” or “Discovery Subject”) for use in pending and
4 anticipated litigation proceedings (“German Proceedings”) in the Regional Court Munich 1, in
5 Munich, Federal Republic of Germany (“German Court”).

6 **I. PRELIMINARY STATEMENT**

7 The dispute underlying the German Proceedings concerns Abramowitz’s attempt to
8 take advantage of his position as a trusted advisor and early investor in Palantir to reap for himself
9 profits at Palantir’s expense by patenting, in his sole name, inventions made by, and belonging to,
10 Palantir.

11 Founded in 2004, Palantir is a software and services company. Today, Palantir is
12 considered one of Silicon Valley’s most valuable privately held technology companies, specializing in
13 data analysis. Palantir’s products are deployed at the most critical government, commercial, and non-
14 profit institutions in the world to solve the complicated problems posed by “big data.”

15 As an early investor in Palantir, Abramowitz became a respected confidant and advisor
16 to Palantir and its senior executives. Trading on his role as an early investor and confidant,
17 Abramowitz received confidential information about Palantir’s business and its most sensitive
18 business strategies and trade secrets, always under the pretense that his and Palantir’s interests were
19 identical. However, unbeknownst to Palantir and its senior management, by 2014, Abramowitz had
20 switched sides. Rather than acting in the best interest of Palantir, and notwithstanding that he had no
21 history of technical invention or patent innovation, Abramowitz filed patent applications in the United
22 States and the European Union naming himself as the sole inventor and assignee in an attempt to steal
23 inventions developed by Palantir over the course of many years of hard work.

24 As relevant here, Abramowitz filed patent applications WO 2016/064919 and WO
25 2016/065049, which became, *inter alia*, effective as European Patent Applications EP 15851807.6
26 (“EP 807”) and EP 15852487.6 (“EP 487,” and collectively with EP 807, “Cyber Patents”). In general
27 terms, the Cyber Patents concern technology invented by Palantir to assist with the efficient detection,
28 defense, and prevention of cyber attacks, as well as the risk-assessment and provision of insurance

1 against such attacks. The disclosed inventions are distinguished, *inter alia*, by a real-time retrieval,
2 monitoring, and evaluation of large amounts of data on cyber attacks such as for the provision of
3 respective insurance. In addition, the disclosed inventions focus on pooling forces to detect and ward
4 off cyber attacks via a consortium and the associated evaluation of large amounts of data. While
5 Abramowitz's applications for the Cyber Patents claim that he is responsible for the technological
6 innovation underlying the Cyber Patents, they are in fact based on the trade secrets that Abramowitz
7 stole from Palantir.

8 In addition, on October 29, 2015, Abramowitz filed international patent applications
9 WO 2016/069861 and WO 2016/069857, which became, *inter alia*, effective as European Patent
10 Applications EP 15854273.8 ("EP 273") and EP 15854898.2 ("EP 898" and collectively, with EP 273,
11 the "Healthcare Patents," and collectively with the Cyber Patents, the "Challenged Patents"). In
12 general terms, the Healthcare Patents concern technology invented by Palantir to improve the
13 description of clinical trial for prescriptive drugs. This technology can interpret and analyze various
14 data for purposes of patient recruitment and trial. In addition, Palantir developed technology to
15 provide insurance risk assessments, including, for example, patient diagnoses not accounted for by
16 health insurance companies and health fraud risk. While Abramowitz's applications for the
17 Healthcare Patents claim that he is responsible for the technological innovation underlying the
18 Healthcare Patents, they are in fact based on trade secrets Abramowitz stole from Palantir.

19 Palantir eventually discovered Abramowitz's patent applications. Having uncovered
20 Abramowitz's betrayal, Palantir took steps to protect the intellectual property that was rightfully
21 Palantir's. Palantir commenced proceedings before the United States Patent and Trademark Office
22 ("U.S. PTO") to establish its rights with respect to the technology described in the Cyber Patents, and
23 also commenced a civil action in California state court.

24 In addition, consistent with its strategy of protecting its intellectual property, on August
25 6, 2018, Palantir brought suit in Munich, Germany seeking a declaration that Abramowitz was not
26 entitled to obtain the Cyber Patents, and that it is Palantir, not Abramowitz, that is entitled to patent
27 the inventions described in the Cyber Patents. In this action, Palantir also seeks compensation for all
28 damages suffered as a result of Abramowitz's filing of the Cyber Patents in Europe and Germany

1 (respectively filing the concerned international applications and naming the European Patent
2 Organization's member states and Germany as designated states) and discontinuing these application
3 proceedings. Palantir also intends to bring a similar suit in Germany seeking declaratory relief and
4 damages arising from Abramowitz's wrongful filing of the Healthcare Patents.

5 Through this Application, Palantir seeks evidence for use in the German Proceedings.
6 As demonstrated below, Palantir's Application should be granted.

7 First, Palantir satisfies each statutory requirement for 1782 discovery. Palantir is an
8 interested person in the German Proceeding, in which Palantir has already brought claims against
9 Abramowitz, and anticipates bringing additional claims shortly. Abramowitz is found in this District,
10 and the requested discovery is for use in the German Proceeding. The requirements of Section 1782
11 are accordingly satisfied.

12 Second, the discretionary factors set out by the Supreme Court in Intel Corp. v.
13 Advanced Micro Devices, Inc., 542 U.S. 241, 264-65 (2004) favor the granting of the requested
14 discovery. While Abramowitz is a party to the German Proceeding, the discovery Palantir seeks here
15 is not, and will not be, available in the German Proceeding due to limited pre-trial discovery available
16 in Germany. Faced with similar situations, numerous courts have granted 1782 discovery in aid of
17 German proceedings, finding Section 1782 discovery to be the most effective and efficient way to
18 obtain evidence that is relevant to such proceedings. Moreover, while such discovery is not available
19 through the German court process, German courts will accept assistance provided by a United States
20 court as German courts routinely consider evidence obtained pursuant to Section 1782 where, as here,
21 the discovery sought through Section 1782 is relevant to the issues being litigated in the German
22 Proceeding. Finally, the requests are modest and seek documents and testimony from Abramowitz, an
23 individual located in this District, making that evidence most accessible through a U.S. court.

24 In short, Abramowitz has information highly relevant to the claims asserted in the
25 German Proceeding. This Court should grant Palantir the discovery it seeks to obtain this information.
26 Further, granting the Application will foster Section 1782's twin aims of providing efficient assistance
27 to participants in international litigation and encouraging foreign countries to similarly assist our
28 courts. Finally, granting Section 1782 discovery is particularly appropriate here, where Abramowitz

1 engaged in purposeful conduct in Europe which gave rise to the German Proceeding, in connection
2 with which the Applicant seeks discovery. Palantir's Application should be granted.

3 **II. FACTUAL BACKGROUND**

4 **A. The Parties**

5 Applicant Palantir Technologies, Inc. is a Delaware corporation with its principal place
6 of business at 100 Hamilton Avenue, Palo Alto, California, 94301.

7 Marc L. Abramowitz is a citizen of the United States, who resides at 3455 Washington
8 Street, San Francisco, CA 94118.

9 **B. Abramowitz's Relationship with Palantir**

10 Palantir was founded in 2004, and has become one of Silicon Valley's most valuable
11 privately held companies, focusing on big data analytics. With this purpose in mind, Palantir has
12 devoted many years to the constant development, testing and invention of a wide variety of concepts
13 for processing and analyzing data. Palantir's objective is to create solutions that enable customers to
14 carry out the most efficient analysis and evaluation of data possible, as well as to create a user-friendly
15 interface, both at the level of the data input and with regard to the presentation of its evaluation.

16 Abramowitz was one of the early equity investors in Palantir. See Waldeck Decl., Ex.
17 A, at 5. Over time, Abramowitz established close relationships with Palantir's founders, officers and
18 employees. As a result, he was viewed as a trusted investor and advisor by Palantir. Abramowitz
19 fostered these relationships of confidence and held himself out as someone whose interests were
20 completely aligned with Palantir. See id., at 5-6.

21 Over the years, Abramowitz held frequent exchanges with Palantir and, as an investor
22 and trusted advisor, enjoyed its confidence. In this context, Abramowitz visited Palantir on numerous
23 occasions and engaged in regular discussions with Palantir's senior management about the company's
24 most sensitive business strategies and trade secrets. See id., at 6. In particular, Abramowitz regularly
25 inquired specifically about particular projects of Palantir and asked about concepts and applications
26 for new technologies in his role as a shareholder and (purported) trusted advisor. Given his role and
27 the associated obligations of confidentiality, Palantir gladly and comprehensively answered
28 Abramowitz's questions and provided him with accompanying material and explanations. See id.

1 **C. Abramowitz Misappropriates Palantir’s Trade Secrets And Seeks To Patent**
 2 **Palantir’s Inventions As His Own**

3 **1. The Cyber Technology**

4 Since at least the beginning of 2013, a team of engineers at Palantir has been working
 5 on a project with the aim of developing systems and methods to better defend enterprises against cyber
 6 attacks on their networks. One aspect of this project was the ability to share data on cyber attacks
 7 between different participants in a monitoring system, in order to defend against cyber attacks more
 8 efficiently and to also prevent cyber attacks. Internally, Palantir referred to this technology as
 9 “CyberMesh” or “Cyber Mesh.”

10 During this same time period, the same team at Palantir also addressed the need to
 11 improve cyber insurance systems. Specifically, Palantir recognized the difficulties businesses faced in
 12 getting efficient and reasonable insurance against cyber attacks because of the difficulties faced by
 13 insurance providers in establishing a suitable insurance model. Therefore, Palantir worked to develop
 14 a system that would permit the accurate determination of cyber attack risk. To do so, Palantir wanted
 15 to take advantage of its ability to access and understand customer data in real time.

16 As early as September 2013, Palantir’s engineers noted significant progress in their
 17 work, and, in October 2013, met with Palantir’s patent attorneys to discuss the possibility of
 18 protecting these advances. Palantir’s exchanges with its patent attorneys would continue for months.

19 In 2014, Palantir informed Abramowitz about these inventions. As with other
 20 conversations with Abramowitz, these conversations were confidential in nature, and Palantir shared
 21 the information with Abramowitz solely because of his close relationship with the company and its
 22 management, which by this point had lasted for almost a decade. Specifically, on June 9, 2014, an
 23 employee of Palantir emailed Abramowitz stating:

24 We are exploring launching our own cyber insurance business (in
 25 partnership with a traditional insurer) that takes a more active role.
 26 We’d actually deploy probes and sensors onto the networks of all our
 customers, actively monitoring in real time not only for attacks but also
 signs of weakness.

27 See id. at 17. A day later, Abramowitz met with one of Palantir’s engineers in person to discuss the
 28 advances Palantir had made in this area.

1 During that meeting, Abramowitz expressed a desire to lead Palantir's cyber insurance
 2 business. See id. When Palantir declined, Abramowitz apparently decided to take Palantir's invention
 3 for himself, filing a patent application with the U.S. PTO. Abramowitz did so despite the fact that he
 4 has no scientific or technical training, has no record of technical invention or patent innovation and
 5 has, instead, made his fortune through equity investing.

6 Evidently not satisfied with seeking a U.S. patent for the inventions developed by
 7 Palantir, on October 20 and 21, 2015, Abramowitz filed two international patent applications seeking
 8 the Cyber Patents. See id. at 7-8.

9 EP 807—the first of the two Cyber Patents—concerns a dynamic security rating for
 10 cyber insurance products designed by Palantir to provide a modern insurance information system in
 11 the cyber security context (“cyber insurance systems”). This system is tailored to the unique features
 12 of cyber security and the risks associated with potential cyber attacks in a way cyber insurance
 13 currently is not. See id. at 9-10. The second Cyber Patent, EP 487, concerns the need for efficient
 14 cyber attack control and cyber information sharing and relates to a system for the joined and
 15 coordinated detection, handling and prevention of cyber attacks. See id. at 11-12.

16 While Abramowitz claims to be the sole inventor entitled to the Cyber Patents, the
 17 inventions and discoveries on which the Cyber Patents are based belong to Palantir, and only Palantir.
 18 Abramowitz's claim to ownership of these technologies is nothing more, and nothing less, than simple
 19 misappropriation of Palantir's discoveries—discoveries which Palantir came to through years of
 20 diligent effort and millions of dollars in investments. See id. at 15.

21 **2. The Healthcare Technology**

22 Since at least 2010, Palantir has worked extensively to identify a product with which to
 23 enter into and advance the clinical trial space. As a result of this research, Palantir developed data
 24 analytics services to improve the design of clinical trials of prescription drugs. Palantir's developed
 25 technology interpreted and analyzed various forms of data for patient recruitment in clinical trials held
 26 by pharmaceutical companies and academic institutions. See Waldeck Decl. ¶ 9; Bukowski Decl. ¶ 4.
 27 Further, Palantir also worked to develop data analytic services to perform insurance risk assessments,
 28 including, for example, patient diagnoses not accounted for by health insurance companies and

1 healthcare fraud risks. See Bukowski Decl. ¶ 4.

2 As with the cyber technologies, Abramowitz learned about Palantir's innovation in the
3 healthcare sector through his communications with Palantir about Palantir's research and
4 development. In February 2014, Abramowitz sought to broker a deal for the healthcare technology
5 between Palantir and a third party. When it became clear that the introduction would not result in a
6 consummated deal, Abramowitz decided to take the healthcare technology for himself by filing patent
7 applications with the U.S. PTO claiming to have invented the healthcare technology.

8 As he did with the Cyber Patents, Abramowitz filed two international patent
9 applications. EP 898—the first of the two Healthcare Patents—concerns a method and system for
10 accurately assessing health insurance risk based on access to data including medical, health or drug
11 related information. This process is able to produce an insurability risk metric, which can be applied
12 to accurately price health insurance for individuals. Meanwhile, EP 273 concerns the need for better
13 access to data to monitor an individual's suitability for participation in a clinical drug trial. The system
14 proposed is able to obtain and filter relevant information from multiple dynamic sources to produce a
15 drug trial suitability metric to determine an individual's ability to participate in, remain in, or benefit
16 from a clinical drug trial.

17 **D. Palantir Fights Back**

18 When Palantir learned of Abramowitz's treachery, it took steps to protect its
19 inventions. Palantir brought interference proceedings before the U.S. PTO seeking to establish its
20 rights with respect to the inventions claimed in Abramowitz's Cyber Patent applications. Those
21 proceedings remain pending as the U.S. PTO considers whether to grant Abramowitz's applications.
22 If the U.S. PTO decides to do so, it will, only then, adjudicate Palantir's claims, which are presently
23 held in abeyance. Palantir is currently contemplating bringing additional proceedings before the U.S.
24 PTO against Abramowitz in connection with the Healthcare Patents.

25 Palantir also brought an action in California state court seeking damages for
26 Abramowitz's breaches of contractual obligations and violations of California state law. That action
27
28

1 too is pending.¹

2 **E. Palantir Commences the German Proceeding**

3 Finally, seeking to protect its intellectual property in Europe from Abramowitz, earlier
 4 this week Palantir brought an action in the Regional Court of Munich, Federal Republic of Germany,
 5 seeking a declaration that (i) Abramowitz was not entitled to file the Challenged Patents, and (ii) that
 6 it is Palantir, not Abramowitz, that is entitled, to patent and profit from the discoveries underlying the
 7 Challenged Patents. Palantir also seeks a declaration that Abramowitz is obliged to compensate
 8 Palantir for all damages suffered due to the filings of the Cyber Patents as non-entitled person naming
 9 EP and Germany as designated states and discontinuing these applications. See Waldeck Decl. ¶ 8. In
 10 the coming weeks, Palantir anticipates bringing a similar action in the German courts to vindicate its
 11 rights with respect to the Healthcare Patents. See id., ¶ 9; Bukowski Decl. ¶ 4.

12 **III. REQUESTED DISCOVERY**

13 Through this Application, Palantir seeks 8 categories of documents directly relevant to
 14 the German Proceeding that are in the possession, custody and control of Abramowitz.

15 As set in more detail in the proposed subpoena attached as Exhibit A to the Bukowski
 16 Declaration, dated August 10, 2018, Abramowitz seeks non-privileged documents: (1) supporting
 17 Abramowitz's claim that he is an inventor of the technology described in the Challenged Patents; (2)
 18 concerning the conception of each challenged patent; (3) concerning the content, research,
 19 development, investment, or reduction to practice for each Challenged Patent; (4) concerning the
 20 ideas, concepts, systems, methods, or technologies described in the Challenged Patents; (5) reflecting
 21 any communication between Abramowitz, on the one hand, and Palantir, or any director, officer, or
 22 employee of Palantir, on the other, concerning the technology described in the Challenged Patents; (6)
 23 concerning any effort by Abramowitz to monetize the technology described in the Challenged Patents;
 24 (7) concerning Abramowitz's knowledge of the technology described in the Challenged Patents; (8)
 25 concerning communications between Abramowitz, on the one hand, and any third party, on the other,
 26 concerning the Challenged Patents or the technology underlying the Challenged Patents; and (9)

27 ¹ Separately, Abramowitz has commenced litigation in Delaware, seeking to vindicate his alleged
 28 rights as Palantir's shareholder.

1 concerning any license granted by Palantir to Abramowitz or by Abramowitz to Palantir with respect
 2 to the technology covered by the Challenged Patents. Palantir also seeks Abramowitz's deposition
 3 testimony.

4 These factual issues are all directly relevant to Palantir's claims that Abramowitz was
 5 not the real inventor of the technologies underlying the Challenged Patents, and that these innovations,
 6 and the patents protecting them, belong to Palantir.

7 **IV. ARGUMENT**

8 As demonstrated below, Palantir has satisfied all of Section 1782's statutory
 9 requirements, and the discretionary factors strongly favor granting the limited discovery requested.

10 Section 1782 is "the product of congressional efforts, over the span of nearly 150 years,
 11 to provide federal-court assistance in gathering evidence for use in foreign tribunals." Intel Corp., 542
 12 U.S. at 247. Over time, Congress has "substantially broadened the scope of assistance federal courts
 13 could provide for foreign proceedings." Id. at 247-49; Appl. of Consorcio Ecuatoriano de
 14 Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc., 747 F.3d 1262, 1268 (11th Cir. 2014)
 15 (commenting that the evolution of Section 1782 demonstrates a Congressional desire "to broaden the
 16 scope of assistance" and to allow district courts to more readily grant discovery); Brandi-Dohrn v.
 17 IKB Deutsche Industriebank AG, 673 F.3d 76, 80 (2d Cir. 2012) ("[T]he statute has, over the years,
 18 been given increasingly broad applicability."). Today, Section 1782 allows a litigant in foreign
 19 proceedings to seek a "broad range of discovery" so as to "assist foreign tribunals in obtaining
 20 relevant information that the tribunals may find useful." Intel, 542 U.S. at 259, 262.

21 To obtain discovery under Section 1782, a party to a foreign proceeding need only
 22 demonstrate: (1) that the request is made by an interested person (2) seeking evidence (3) for use in a
 23 foreign proceeding and (4) that the person from whom discovery is sought is located in the district of
 24 the court receiving the application. Intel, 542 U.S. at 264; In re Republic of Ecuador, No. C-10-80225
 25 MISC CRB (EMC), 2010 U.S. Dist. LEXIS 102158, at *4 (N.D. Cal. Sept. 15, 2010) (quoting In re
 26 Chevron Corp., 709 F. Supp. 2d 283, 290 (S.D.N.Y. 2010)).

27 Once Palantir establishes that the statutory requirements for Section 1782 relief are
 28 satisfied, this Court has discretion to grant the Application based on certain equitable considerations,

1 including: (i) whether the discovery sought is within the jurisdiction of the foreign proceeding, (ii)
 2 “the nature of the foreign tribunal, the character of the proceedings underway abroad, and the
 3 receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial
 4 assistance,” (iii) whether the Section 1782 request “conceals an attempt to circumvent foreign proof
 5 gathering restrictions,” and (iv) whether the request is otherwise “unduly intrusive or burdensome.”
 6 See Intel, 542 U.S. at 264-65. Here, each of these discretionary factors supports granting Palantir’s
 7 Application.

8 Further, district courts must exercise their discretion under Section 1782 in light of the
 9 twin aims of the statute: “providing efficient means of assistance to participants in international
 10 litigation in our federal courts and encouraging foreign countries by example to provide similar means
 11 of assistance to our courts.” Intel, 542 U.S. at 252; Siemens AG v. Western Digital Corp., No. 8:13-
 12 cv-01407-CAS-(AJWx), 2013 WL 5947973, at *2 (C.D. Cal. Nov. 4, 2013) (“A district court’s
 13 discretion is to be exercised in view of the twin aims of § 1782”). Thus, Section 1782 has been
 14 broadly interpreted to permit U.S. courts to grant “wide assistance” to foreign litigants. See, e.g., John
 15 Deere Ltd. v. Sperry Corp., 754 F.2d 132, 135 (3d Cir. 1985) (“Section 1782’s liberal intent to provide
 16 judicial assistance” has been “acknowledged” as Section 1782’s “primary statutory goal”); In re Appl.
 17 of Malev Hungarian Airlines, 964 F.2d 97, 100 (2d Cir. 1992) (“imposing an additional burden” on
 18 Section 1782 applicants would “undermine the policy of improving procedures for assistance to
 19 foreign and international tribunals.”).

20 As demonstrated below, the court should exercise its discretion and grant Palantir its
 21 requested discovery. This exercise of discretion is particularly warranted here, where the foreign
 22 litigation arises directly out of Abramowitz’s decisions made in the United States to misappropriate
 23 Palantir’s valuable intellectual property in Europe.

24 **A. Palantir’s Application Meets the Section 1782 Requirements**

25 Palantir’s Application clearly satisfies the four statutory requirements outlined by the
 26 Supreme Court in Intel: Palantir is an “interested person” in the German Proceeding, which are foreign
 27 proceedings, and through this Application Palantir seeks evidence from discovery subjects residing
 28 within this District. Intel, 542 U.S. at 264.

1 **1. Palantir is an “Interested Person”**

2 First, as Palantir is a party in the German proceeding it has commenced, and will be a
3 party in the proceedings that Palantir anticipates commencing shortly, there is “no doubt” that it
4 qualifies as an “interested person” within the meaning of Section 1782. See Intel, 542 U.S. at 256
5 (there is “[n]o doubt litigants are included among, and may be the most common example of, the
6 ‘interested person.’”).²

7 **2. The Application Seeks Documentary and Testimonial Evidence**

8 Second, evidence as defined in Section 1782 includes a “testimony or statement” of a
9 person or the production of “a document or other thing.” In re Mak, No. C 12-80118 MISC SI, 2012
10 WL 1965896, at *1 (N.D. Cal. Mar 31, 2012). Accordingly, Palantir’s request for documents and
11 deposition testimony constitutes evidence within the meaning of Section 1782. See id.

12 **3. The Evidence Is For Use in a Foreign Proceeding**

13 Likewise, Palantir easily meets the requirement that the evidence sought through a
14 Section 1782 application be for use in a foreign proceeding, as the German Proceedings—which, with
15 respect to the Cyber Patents are pending, and with respect to the Healthcare Patents, will commence
16 shortly, in the German regional court in Munich, Germany—satisfy the test for a “Foreign
17 Proceeding.” See, e.g., Intel, 542 U.S. at 258 (“[t]he term ‘tribunal’ includes . . . conventional civil,
18 commercial, criminal, and administrative courts”) (citations omitted); Cryolife v. Tenaxis Medical,
19 Inc., No. C08-05124 HRL, 2009 U.S. Dist. LEXIS 3416, at *1 (N.D. Cal. Jan. 13, 2009) (granting
20 Section 1782 application for patent infringement action in the Dusseldorf Regional Court in
21 Germany).

22 Nor is there any dispute that the evidence sought by this Application is for “use in” a
23 foreign proceeding. To satisfy the “for use” prong, the evidence need only be relevant to the foreign
24 proceeding. See Weber v. Finker, 554 F.3d 1379, 1384-85 (11th Cir. 2009) (1782 discovery requests

25 _____
26 ² That Palantir has not yet commenced an action to vindicate its rights with respect to the Healthcare
27 Patents is of no moment. As the Supreme Court explained in Intel, an action need not be pending to
28 warrant the exercise of Section 1782. All that a Section 1782 applicant needs to show is that a
potential foreign proceeding is within “reasonable contemplation,” see Intel, at 247, a standard that
Palantir has more than satisfied here.

1 need only comply with the Fed. R. Civ. P. 45 standard for relevancy). The evidence need not actually,
 2 or even probably, be discoverable or admissible in the foreign proceeding. See Brandi-Dohrn, 673
 3 F.3d at 80-81. Here, there is no dispute that evidence concerning Abramowitz's knowledge and
 4 understanding of the technology underlying the Challenged Patents, his communications about that
 5 technology, and documents on which he intends to rely to support his entitlement to the Challenged
 6 Patents are all directly relevant to the German Proceedings.

7 **4. The Discovery Subject is Located in the Northern District of California**

8 The Discovery Subject can be found in this district. Abramowitz currently resides at
 9 3455 Washington Street, San Francisco, CA 94118. See Waldeck Decl. ¶ 4.

10 **B. The Intel Discretionary Factors Strongly Favor Granting Discovery**

11 In this case, each of the four discretionary factors outlined by the Supreme Court in
 12 Intel, 542 U.S. at 264-65, strongly favors discovery.

13 **1. The German Tribunal May Not Compel Discovery of Evidence in the**
 14 **United States**

15 Where, as here, discovery sought through Section 1782 is not available in the foreign
 16 proceeding, the first Intel factor supports discovery. Although the case law at times refers to whether
 17 the discovery target is within the foreign tribunal's jurisdictional reach, the more important issue is
 18 whether the requested discovery is obtainable through the foreign proceedings. See In re AIS GmbH
 19 Aachen Innovative Solutions, No. 5:16-mc-80094-EJD, 2017 U.S. Dist. LEXIS 114288, at *14 (N.D.
 20 Cal. July 21, 2017) (affirming grant of 1782 application for discovery in relation to a German patent
 21 proceeding in which discovery target was a participant); In re Technik, No. C11-1386-JCC, 2011 U.S.
 22 Dist. LEXIS 162826, at *7 (W.D. Wash. Oct. 6, 2011) (holding that the first discretionary factor
 23 weighed in favor of discovery when discovery target was a participant in the German proceeding).

24 Although Abramowitz is a party to the foreign dispute, a number of foreign courts have
 25 granted Section 1782 relief, where, as here, the requested discovery is not available through the
 26 foreign proceeding. See Waldeck Decl. ¶¶ 12-13; In re Clerici, 481 F.3d 1324, 1334-35 (11th Cir.
 27 2007) (finding all Intel discretionary factors favored applicant although the respondent was a party to
 28 the underlying proceeding in Panama, the Panamanian Court was unable to enforce its own order to

1 produce information because the respondent had left Panama); In re Technik, 2011 U.S. Dist. LEXIS
 2 162826 at *7. For example, in Heraeus Kulzer GmbH v. Biomet, the Section 1782 applicant sought
 3 discovery in the United States from its adversary in a German proceeding, whom it had sued for trade
 4 secret misappropriation in Germany. Recognizing that the requested discovery was not available in
 5 German proceedings, and noting that “[t]he importance of American-style discovery to Heraeus’
 6 ability to prove misappropriation of its trade secrets by Biomet is undeniable,” the court granted
 7 Heraeus’ Section 1782 application. 633 F.3d 591, 596-97 (7th Cir. 2011) (authorizing Section 1782
 8 discovery because the German litigant could not “obtain even remotely comparable discovery by
 9 utilizing German procedures”); see also In re Servicio Pan Americano de Proteccion, 354 F. Supp. 2d
 10 269, 274 (S.D.N.Y. 2004) (granting a 1782 application even though respondent was a party to the
 11 proceeding because of the limitations of Venezuelan discovery rules).

12 Further, the Discovery Subject and the documents targeted by this Application are
 13 located in the United States, making it more efficient to obtain that evidence through the compulsion
 14 power of a U.S. court. See In re Application of Proctor & Gamble Co., 334 F. Supp. 2d 1112, 1114
 15 (E.D. Wis. 2004) (granting 1782 application to subpoena a party to a foreign proceeding because the
 16 evidence was located in the United States and could be more efficiently obtained through a U.S.
 17 court); In re Sociedad Militar Seguro de Vida, 985 F. Supp. 2d 1375, 1380 (N.D. Ga. 2013) (granting
 18 1782 application against both parties and non-parties to a foreign proceeding to promote efficiency).³

19 The first discretionary factor thus supports the grant of discovery here.

20 **2. The German Tribunal Is Not Hostile To This Application**

21 In evaluating this factor, courts should find in favor of discovery absent a “clear
 22 directive” – meaning “authoritative proof” – from the foreign country’s judicial, executive or
 23 legislative declarations that specifically rejects the use of evidence gathered under foreign
 24 proceedings. See Euromepa S.A. v. R. Esmerian, Inc., 51 F.3d 1095, 1100 (2d Cir. 1995); In re

25 _____
 26 ³ See also In re Application of Auto-Guadeloupe Investissement S.A., No. 12-0221, 2012 WL
 27 4841945, at *5 (S.D.N.Y. Oct. 10, 2012) (discovery warranted against party to a proceeding when
 28 French procedural law would not have provided for the same scope of discovery); Consortio Minerio
 S.A., v. Doe Run Resources Corp., No. 11-0583, 2011 WL 4550200, at *3 (E.D. Mo. Sept. 30, 2011)
 (Peruvian court’s lack of compulsion power weighed in favor of granting Section 1782 application).

IPCom, 2014 WL 12772090 at *3 (granting 1782 application when discovery target was a party to a German patent infringement proceeding because no suggestion that German judges are not receptive to U.S. discovery had been raised). Here, not only is there no such clear evidence, but to the contrary, there is every reason to believe that the German court would appreciate and benefit from this Court's assistance. See Waldeck Decl. ¶ 14. Here, no German procedure exists to prohibit such discovery; rather, German procedure simply does not provide for such discovery in Germany courts. See id. ¶ 15. There is no law, rule of evidence, or rule of procedure in the German Proceeding that prohibits Palantir from filing this Application or from seeking and obtaining the discovery requested here and using it in the German Proceedings. See id. ¶¶ 14-15. Indeed, this Court has previously granted 1782 requests in the context of German patent litigations, as have numerous others. In re Varian Med. Sys Int'l AG, No. 16-mc-80048-MEJ, 2016 U.S. Dist. LEXIS 38911, at *1 (N.D. Cal. Mar. 24, 2016); Cryolife, 2009 U.S. Dist. LEXIS 3416 at *8-9 (granting request for document discovery and deposition testimony to assist German patent infringement litigation); see also Heraeus, 633 F.3d at 597 ("[T]here is nothing to suggest that the German court would be affronted by [the applicant's] recourse to U.S. discovery or would refuse to admit any evidence, or at least any probative evidence").

3. The Application Has Not Been Filed to Circumvent Any Law or Rule

The Application is brought in good faith and does not seek to circumvent German restrictions with respect to foreign proof gathering or other policies. See Waldeck Decl. ¶¶ 10, 15. To the contrary, German law, which governs the parties' dispute, in no way prohibits the parties from seeking the assistance of U.S. courts in collecting evidence. See Waldeck Decl. ¶¶ 14-17; In re Varian, 2016 U.S. Dist. LEXIS 38911 at *15 ("[Applicant] is unaware of any restrictions imposed by German courts in proof-gathering procedures that would prohibit it from obtaining and introducing the discovery it seeks through Section 1782."); In re IPCom, 2014 WL 12772090 at *3 ("U.S. courts have routinely granted applications under Section 1782 for discovery of evidence to be used in German proceedings."); In re Ex Parte Motorola Mobility, LLC, No. C 12-80243 EJD (PSG), 2012 WL 4936609, at *2 (N.D. Cal. Oct. 17, 2012) ("Because there is no indication in the record of an attempt to subvert a foreign tribunal's restrictions, the court finds that this factor weights in favor of [the applicant].").

Discovery should also be granted because the Application presents a more efficient way for Palantir to obtain highly relevant evidence that goes to the heart of the parties' dispute in Germany. Residing in San Francisco, Abramowitz is beyond the jurisdiction of the German Court. See Waldeck Decl. ¶ 4; Cryolife, 2009 U.S. Dist. LEXIS 3416 at *7 ("[The parties] agree that the German court cannot force [the discovery target also party to the German proceeding] to produce documents or provide testimony by compulsory means."). Thus, absent relief under Section 1782, Palantir will be deprived of key evidence for use in the German Proceeding.

4. The Discovery Requests Are Not Unduly Intrusive or Burdensome

Finally, the requested discovery is modest. Palantir seeks only documents and deposition testimony related to Palantir's claims in the German Proceeding; that is documented, concerning Abramowitz's claim that he is an inventor of the technology covered by the Challenged Patents, Abramowitz's knowledge of this underlying technology, and any attempts by Abramowitz to obtain rights to or monetize the technology underlying the Challenged Patents. This discovery is focused, highly relevant, and necessary for a fair and just resolution of the German Proceeding. This factor too supports the grant of Palantir's Application.

* * *

Accordingly, the Intel factors strongly favor the Court exercising its discretion to grant Palantir's Application. Indeed, courts in this Circuit have routinely permitted discovery under Section 1782, when, as here, the applicant has satisfied the statutory requirements and the above factors weighed in favor of granting relief. See, e.g., Cryolife, 2009 U.S. Dist. LEXIS 3416 at *15; In re Republic of Ecuador, 2010 U.S. Dist. LEXIS 102158, at * 14.

C. **This Court may and should order Abramowitz to preserve evidence pending compliance with an Order pursuant to Section 1782**

Courts granting Section 1782 applications routinely order preservation of evidence, and the Applicant requests that the Court do so here. See, e.g., In re Eurasian Natural Resources Corp., No. 18-MC-80041-LB, 2018 WL 1557167, at *5 (N.D. Cal. Mar. 30, 2018) (granting a Section 1782 application and ordering preservation of evidence); In re Machida, No. 8:15-mc-00028-UA (DFMx), 2015 WL 12830388, at *2 (C.D. Cal. Nov. 3, 2015) (same).

1 **V. CONCLUSION**

2 For the reasons set forth above, the Applicant respectfully requests that this Court (i)
 3 grant this Application for Discovery Pursuant to 28 U.S.C. § 1782 with respect to the documents and
 4 testimony requested herein and in Exhibits A and B to the Bukowski Declaration, (ii) order
 5 Abramowitz to produce said documents within 21 days; (iii) permit the deposition requested herein
 6 within the parameters set forth above; (iv) direct Abramowitz to preserve documents and evidence in
 7 his possession, custody or control, and (v) grant such other and further relief as the Court deems just
 8 and proper.

9
 10 DATED: August 10, 2018

/s/ Christopher A. Stecher

CHRISTOPHER A. STECHER
 KEESAL, YOUNG & LOGAN

TIMOTHY P. HARKNESS (*pro hac vice*)
 DAVID Y. LIVSHIZ (*pro hac vice*)
 WERONIKA BUKOWSKI (*pro hac vice*)
 FRESHFIELDS BRUCKHAUS DERINGER US LLP

Pro Hac Vice Applications Forthcoming

Attorneys for Applicant
 Palantir Technologies, Inc.